

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	MB Docket No. 16-357
Entercom License, LLC	)	
	)	Facility ID No. 65438
Applications for Renewal of License for Station	)	File Nos. BRH-20050728AUU
KDND(FM), Sacramento, California	)	and BRH-20130730ANM

To: The Commission  
Attn: Marlene H. Dortch, Secretary

**OPPOSITION OF ENTERCOM LICENSE, LLC  
TO APPLICATION FOR REVIEW**

Entercom License, LLC (“Entercom”) hereby opposes the Application for Review<sup>1</sup> filed by Edward R. Stolz II (“Stolz”) regarding the Chief Administrative Law Judge’s (“Chief ALJ”) order terminating the above-captioned proceeding.<sup>2</sup> The Application for Review is procedurally improper and wholly lacking in merit. It is nothing more than another example of Mr. Stolz’s meritless pleadings filed against Entercom,<sup>3</sup> and the Commission should promptly dismiss or deny it.

**I. THE APPLICATION FOR REVIEW IS PROCEDURALLY IMPROPER**

The *Order* terminated the hearing proceeding related to Entercom’s broadcast license renewal application for Station KDND(FM). As such, review of the *Order* is governed

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<sup>1</sup> Application for Review of Edward R. Stolz II, MB Docket No. 16-357 (Apr. 17, 2017) (“Application for Review”).

<sup>2</sup> *Entercom License, LLC*, Order, FCC 17M-09 (Mar. 16, 2017) (“*Order*”).

<sup>3</sup> It bears noting that Mr. Stolz has previously been declared a “vexatious litigant” by a California court under the provisions of California state law. *Stolz v. RKOY 96.9 FM Radio*, Super. Ct. Sacramento County, 1990, No. CV516026 (cited by *Stolz v. Bank of America National Trust and Savings Association*, 15 Cal. App. 4th 217, 220 (1993)).

exclusively by Section 1.302 of the Commission's rules,<sup>4</sup> which provides, in pertinent part: "[i]f the presiding officer's ruling terminates a hearing proceeding, any party to the proceeding, as a matter of right, may file an appeal from that ruling. . . ."<sup>5</sup> Further, in order to "preserve" this right of appeal, a party must "file a notice of appeal within 10 days after the ruling is released."<sup>6</sup>

Section 1.302, by its terms, "authorizes appeals only by parties"<sup>7</sup> and Mr. Stolz is *not* a party to the proceeding. The Commission declined to make him a party to the hearing.<sup>8</sup> Further, while Mr. Stolz is seeking reconsideration of the Commission's decision not to make him a party, he did not file a motion to intervene with the Chief ALJ, nor did he otherwise attempt to participate in the hearing as a potential party.<sup>9</sup>

Mr. Stolz even lacks basic standing. Mr. Stolz's transient contacts with Station KDND are insufficient to support a claim of listener standing in connection with the Station KDND renewal applications.<sup>10</sup> Likewise, Mr. Stolz's claims of economic injury are, at best, vague and unsubstantiated and do not directly relate to KDND. Mr. Stolz provides no evidence of the

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<sup>4</sup> *Stephen D. Tarkington*, 7 FCC Rcd 5973, 5973 ¶ 2 & n.4 (1992) ("*Tarkington Order*") (holding that appeals of ALJ orders terminating a hearing must be filed under Section 1.302 and do not lie under Section 1.115 of the Commission's rules).

<sup>5</sup> 47 C.F.R. § 1.302(a).

<sup>6</sup> *Id.* § 1.302(b).

<sup>7</sup> *Tarkington Order*, 7 FCC Rcd at 5973 ¶ 2.

<sup>8</sup> *See Entercom License, LLC*, 31 FCC Rcd 12196, 12206 ¶ 23, 12230 ¶ 85 (2016) ("*KDND HDO*").

<sup>9</sup> Most notably, Entercom filed a Motion to Dismiss the Station KDND renewal applications and terminate the hearing, and served Mr. Stolz's counsel, but Mr. Stolz failed to oppose that motion. *See* Motion to Dismiss Renewal Applications and Terminate Hearing, MB Docket No. 16-357 (Feb. 8, 2017) ("*Motion to Dismiss*"). It is too late now to challenge the Chief ALJ's decision to grant that motion.

<sup>10</sup> *KDND HDO*, 31 FCC Rcd at 12206 ¶ 23; *see also Clarksburg Publishing Co. v. FCC*, 225 F.2d 511, 514 n.8 (D.C. Cir. 1955); *Metropolitan Television Co. v. United States*, 221 F.2d 879, 881 (D.C. Cir. 1955) (cited by *Elm City Broadcasting Corp. v. United States*, 235 F.2d 811, 815 (D.C. Cir. 1956)).

“direct competitive injury” or other *likely* financial injury that is required to prove economic interest standing.<sup>11</sup>

Separate and apart from the fact that Mr. Stolz was not a party to the hearing, Mr. Stolz did not file the notice of appeal that is required to preserve the right to appeal the Chief ALJ’s decision terminating a hearing. Absent a timely notice of appeal under Section 1.302(b), the *Order* became effective and unreviewable on April 17, 2017 – 30 days after release.<sup>12</sup>

Even if Section 1.115 of the Commission’s rules governed here, which it does not, Mr. Stolz’s Application for Review is improper on separate procedural grounds. Mr. Stolz is not “aggrieved” by the decision to terminate the hearing as required under Section 1.115.<sup>13</sup> Mr. Stolz not only lacks any cognizable legal interest in this proceeding, but also he achieved the goal of his underlying petition to deny with respect to Station KDND – Entercom is no longer the licensee of KDND.<sup>14</sup> Moreover, Mr. Stolz did not explain why it was not possible for him to participate earlier in the hearing as required by the rule.<sup>15</sup>

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<sup>11</sup> See, e.g., *KERM, Inc. v. FCC*, 353 F.3d 57, 60 (D.C. Cir. 2004) (citing *New World Radio, Inc. v. FCC*, 294 F.3d 164, 170 (D.C. Cir. 2002) and *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 477 (1940)).

<sup>12</sup> 47 C.F.R. § 1.302(b) (“If a notice of appeal is not filed within 10 days, the ruling shall be effective 30 days after the ruling is released and within this period, may be reviewed by the Commission on its own motion.”).

<sup>13</sup> *Id.* § 1.115(a).

<sup>14</sup> Mr. Stolz’s Petition to Deny incorporated by reference Irene Stolz’s Petition to Deny, which argued in effect that the renewal application for Station KDND should be “deferred, revoked, or designated for hearing.” See Petition of Irene Stolz to Deny License Renewals, KCTC(AM), FCC File No. BRH-20050728AUX *et al.*, at 15 (filed Nov. 1, 2005), incorporated by reference in Mr. Stolz’s Petition to Deny; Petition of Edward R. Stolz II to Deny, KBZC, FCC File No. BRH-20050728ATP *et al.*, at 2 (filed Nov. 1, 2013).

<sup>15</sup> 47 C.F.R. § 1.115(a).

## II. THE APPLICATION FOR REVIEW LACKS MERIT

The Application for Review identifies four questions for Commission review. None of these issues demonstrate any material error in the *Order* that warrants Commission review of the *Order* should it choose to reach the merits.

### A. The Status of the Commission's Electronic Database Is Not Error

First, Mr. Stolz asks “[w]hether error [was] *committed by the Commission*” because it had not revised its electronic records to “reflect the cancellation of the KDND license and the deletion of its facilities.”<sup>16</sup> Even Mr. Stolz acknowledges that this issue relates to administrative actions *by the Commission* (or presumably the Media Bureau on delegated authority) and not the substance or rationale of the Chief ALJ’s decision to terminate the hearing. Moreover, this question does not in any way refute the basic facts supporting the *Order*. It is beyond dispute that Entercom has surrendered its KDND license and all other KDND instruments of authorization<sup>17</sup> and has stopped all broadcasting on the spectrum accompanying the license. Whether the Commission has taken the ministerial step of changing its electronic records to reflect Entercom’s surrender of its KDND license is irrelevant to whether the Chief ALJ properly terminated the hearing.

### B. The Chief ALJ Cannot Designate Issues for Hearing Against Different Stations

Second, Mr. Stolz asserts that “there remains the question of whether the hearing issues . . . should be designated for hearing with respect to the remainder of its Sacramento, California

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<sup>16</sup> Application for Review at 4 (emphasis added).

<sup>17</sup> See Motion to Dismiss; see also Letter to Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, from David H. Solomon, Counsel for Entercom License, LLC, KDND(FM), FCC File Nos. BRH-20050728AUU and BRH-20130730ANM (Feb. 3, 2017).

market cluster.”<sup>18</sup> This issue too, has no bearing on the question of whether the Chief ALJ correctly terminated the hearing.

Contrary to Mr. Stolz’s arguments, Entercom did not “settle away” or “duck” any issues designated for hearing.<sup>19</sup> The Commission designated for hearing only issues relating to whether Entercom operated Station KDND in the public interest and whether Station KDND’s renewal applications should be granted.<sup>20</sup> These issues became moot when Entercom surrendered its broadcast license for that station.<sup>21</sup>

Entercom’s five other radio stations in the Sacramento market were not designated for hearing and, on January 18, 2017, the Media Bureau granted the renewal applications for those stations.<sup>22</sup> Mr. Stolz’s argument that issues should now be designated against these other Entercom stations has no bearing on whether the Chief ALJ properly terminated the hearing as to Station KDND. Entercom discontinued service on KDND and surrendered the station license and other KDND instruments of authorization. Based on these facts, the Chief ALJ correctly

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<sup>18</sup> Application for Review at 3.

<sup>19</sup> See *id.* at 5.

<sup>20</sup> *KDND HDO*, 31 FCC Rcd at 12229-30 ¶ 83.

<sup>21</sup> To the extent that Mr. Stolz relies on Commission precedent stating that parties cannot settle issues involving basic qualifications, Application for Review at 5-8, that argument is misplaced. Entercom did not settle any issues involving basic qualifications. The Commission expressly declined to designate a qualification issue for hearing and none of the nine issues actually designated for hearing mention Entercom’s basic qualifications. *KDND HDO*, 31 FCC Rcd at 12209 ¶ 30 n.122 (“As noted above, MAC in its Petition and Edward Stolz in his Reply each request that the Commission designate a character issue against Entercom. We decline to do so.”). The Commission reiterated this point in a separate proceeding involving him. *Stolz v. FCC*, U.S. Court of Appeals for the District of Columbia Circuit, No. 16-1248, Brief for Appellee, at 30 (filed Dec. 15, 2016) (“Contrary to [Stolz’s] suggestion, Entercom’s qualifications to be the licensee of KUDL are not at issue in the [*KDND HDO*], which instead concerns whether to renew the KDND license.”) (citation omitted).

<sup>22</sup> See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, Federal Communications Commission, to Dennis J. Kelley, Esq. *et al.*, 1800B3-JM (Jan. 18, 2017), reconsideration pending, [http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter\\_exh.cgi?import\\_letter\\_id=71468](http://licensing.fcc.gov/cgi-bin/prod/cdbs/forms/prod/getimportletter_exh.cgi?import_letter_id=71468).

concluded that Entercom's actions rendered moot the issues designated for hearing against that station.<sup>23</sup>

The Chief ALJ could not have taken the action Mr. Stolz demands. There is no provision in the Communications Act or the Commission's delegated authority or hearing rules authorizing an ALJ to designate renewal applications for hearing, much less designate issues against renewal applications that have already been granted. While the Chief ALJ has broad authority to administer matters designated for hearing, nothing in the authority delegated to ALJs or the hearing rules authorizes him to exercise jurisdiction over renewal applications unless and until they have been designated for hearing.

Furthermore, the Commission is precluded by statute from considering Mr. Stolz's allegations related to Entercom's operation of Station KDND in the context of the renewal applications for Entercom stations other than KDND. The express language of Section 309(k)(1) of the Act limits the Commission's consideration of a renewal application to consideration of the licensee's operation of the station for which license renewal is sought.<sup>24</sup> In other words, the

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<sup>23</sup> *Order* at 3.

<sup>24</sup> 47 U.S.C. § 309(k)(1) ("If the licensee of a broadcast station submits an application to the Commission for renewal of such license, the Commission shall grant the application if it finds, *with respect to that station*, during the preceding term of its license. . .") (emphasis added); *Entercom License, LLC*, 31 FCC Rcd 12034, 12036 n.13 (2016) (non-Sacramento renewals) (the Commission "cannot [] override the statutory limitation that, in acting on a renewal application, the Commission is limited to the consideration of the licensee's operation of the station for which license renewal is sought."); *KDND HDO*, 31 FCC Rcd at 12208 ¶ 28 ("for renewal purposes, Section 309(k)(1) limits the scope of our review to the station for which license renewal is being considered."); *Sagittarius Broadcasting Corp.*, 18 FCC Rcd 22551, 22555 ¶ 8 (2003) ("Congress, however, has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought.") (citation omitted); *Visionary Related Entm't, LLC*, 27 FCC Rcd 1392, 1396 ¶ 13 (MB 2012) ("The plain language and structure of [Section 309(k)] clearly establish that the scope of the 'violations' listed in Section 309(k)(1) is limited to the station for which license renewal is being considered. Congress has expressly limited the scope of the license renewal inquiry to matters occurring at the particular station for which license renewal is sought. We will therefore consider each station individually.") (citation omitted). The legislative history quoted by Mr. Stolz, Application for Review at 8-9, does not say the contrary and, even if it did, the clear statutory language would govern.

Commission cannot view the Entercom renewal applications for the Sacramento stations as a cluster, as Mr. Stolz urges, but must view Entercom's operation of each station independently.

In any event, however, Mr. Stolz's arguments for designating issues against Entercom's other Sacramento stations are pending on reconsideration before the Commission and doubtless will be addressed there.<sup>25</sup>

**C. The Chief ALJ Cannot Grant the MAC Petition To Enlarge Against Other Stations**

Third, Mr. Stolz asks whether the Petition to Enlarge filed by Sue Wilson and the Media Action Center (collectively "MAC") on January 9, 2017, "must be granted against Entercom's five other radio stations in the Sacramento, California radio market."<sup>26</sup> As discussed above, the Chief ALJ has no authority to grant petitions to enlarge against renewal applications that were not designated for hearing and have been granted. Thus, a decision not to grant the petition to enlarge against other radio stations cannot have been error.

Moreover, petitions to enlarge do not even lie against applications that have not been set for hearing. The Commission's rules provide for filing petitions to enlarge only in connection with hearings.<sup>27</sup> Thus, given that the applications for renewal for Entercom's five other Sacramento stations were not set for hearing, MAC's petition to enlarge cannot be granted against them as a matter of procedure.

Nor can the Commission grant the petition to enlarge against the other stations as a matter of substance. As noted above, Section 309(k)(1) of the Act limits the Commission's consideration of a renewal application to consideration of the licensee's operation of the station

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<sup>25</sup> See Petition of Edward R. Stolz II for Reconsideration, KUDL, FCC File No. BRH-20050828ATP *et al.* (Feb. 17, 2017); Opposition of Entercom License, LLC to Petition for Reconsideration, KUDL, FCC File No. BRH-20050828ATP *et al.* (Mar. 2, 2017).

<sup>26</sup> Application for Review at 4.

<sup>27</sup> See 47 C.F.R. § 1.229.



for which license renewal is sought.<sup>28</sup> In short, Section 309(k)(1) precludes the Commission from considering allegations related to Entercom's operation of Station KDND in the context of renewal applications for Entercom stations other than KDND.

**D. The Chief ALJ Was Not Required To Assess Economic Penalty Or Loss**

Finally, Mr. Stolz asks whether the Chief ALJ improperly failed to "ascertain whether Entercom actually suffered an economic penalty or loss by its voluntary act turning in the KDND(FM) license."<sup>29</sup> There is no potential error here. Nothing in the Act or the Commission's rules required the Chief ALJ to determine whether voluntarily surrendering the Station KDND license resulted in, or assessing the magnitude of, an economic penalty or loss on Entercom's part. Simply put, Entercom discontinued service and surrendered its license as permitted by the rules, which was a loss, in and of itself. Further, it follows that these acts necessarily rendered the hearing moot because the license that was the subject of the hearing no longer existed and could not be renewed. Accordingly, terminating the hearing was the proper course for the Chief ALJ to follow.

Moreover, Mr. Stolz is wrong as a simple matter of fact. The Chief ALJ did conclude that Entercom suffered a loss in surrendering the Station KDND license. He expressly acknowledged that "Entercom has willingly accepted the severest penalty of a renewal case by surrendering forever its license to operate KDND(FM). . . ."<sup>30</sup> The Chief ALJ was not required to calculate with precision the scope of this loss.

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<sup>28</sup> See *supra* note 24.

<sup>29</sup> Application for Review at 4.

<sup>30</sup> Order at 2.



### III. CONCLUSION

For these reasons, the Commission should promptly dismiss or deny the Application for Review.

Respectfully submitted,

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May 2, 2017

**CERTIFICATE OF SERVICE**

I, Blake A. Zanardi, do hereby certify that, on this 2<sup>nd</sup> day of May, 2017, the foregoing Opposition of Entercom License, LLC to Application for Review was served by first class mail, postage prepaid, on the following persons:

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